

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/6/18

CARLOS M. SALAS, et al.,

Plaintiffs,

-against-

DOLPHIN ADVISORS, LLC, et al.,

Defendants.

16cv02248 (DF)

ORDER**DEBRA FREEMAN, United States Magistrate Judge:**

By motion dated February 1, 2018 (Dkt. 24), Plaintiffs sought to compel Defendants to supplement their document production. After the Court denied that motion without prejudice on February 6, 2018 (Dkt. 26 (Text Order)), Plaintiffs sought to renew it on that same date (Dkt. 27). On February 8, 2018, the Court issued an Order (Dkt. 28 (Mem. Endors.)), directing Plaintiffs to supplement their renewed motion by submitting the particular document request at issue; Defendants' response to that request; "an explanation as to why the particular document in question is responsive to the request, relevant to a claim or defense asserted in the action, and proportional to the needs of the case"; and the basis for any argument that Defendants' objection to production had been waived. Plaintiff and Defendants then both made further submissions in response to the Court's February 8 Order (*see* Dkts. 29, 30, 31), making clear that what is currently at issue is Defendants' objection, on relevance grounds, to the production of a single document – the 2004 financial statement of non-party Dolphin Offshore Partners, LP ("Dolphin Offshore").

In their submissions, Plaintiffs argue that the 2004 financial statement is relevant to show (1) "how much money Dolphin Offshore had loaned Dolphin Direct [Equity Partners, LP ("Dolphin Direct")], the entity in which Plaintiffs invested and a named defendant in this

litigation, “at the onset of Dolphin Direct’s operation”; (2) “whether Dolphin Offshore [] distributed [] assets to Dolphin Direct at the proper cost”; and (3) the identity of Dolphin Direct’s auditor. (Dkt. 29, at 3.)

As to Plaintiffs’ first two arguments, Defendants represent that Dolphin Offshore’s 2004 financial statement covers the time period from March 31, 2003 through March 31, 2004 (*see* Dkt. 30, at 2), and note that Plaintiffs did not invest in Dolphin Direct until May 13, 2004, after the date covered by the financial statement in question (*see id.*).¹ Further, having reviewed Plaintiff’s Complaint, the Court notes that it makes reference to an “inception” date for Dolphin Direct of April 15, 2004. (Complaint, dated Feb. 26, 2016 (Dkt. 1-1) ¶ 29.) Assuming that this “inception” date refers to the date that Dolphin Direct was created, Plaintiffs have failed to show that Dolphin Offshore’s 2004 financial statement, which predates the stated date of “inception,” would reflect any transaction, whether loan or asset sale, between Dolphin Offshore and Dolphin Direct.²

As to Plaintiff’s third argument, Plaintiffs have failed to show that the 2004 financial statement at issue would reveal the identity of the auditor that Defendants retained for Dolphin Direct (or the fact that Defendants did not retain an auditor, as Plaintiffs contend (*see* Dkt. 31)), in light of the fact that the financial statement pertains to Dolphin Offshore, not Dolphin Direct, apparently for a period of time prior to the date when Dolphin Direct was created.

¹ Defendants also note that they have produced Dolphin Offshore’s financial statements for 2005 through 2011, covering the period relevant to the claims asserted in this case. (Dkt. 30, at 3.)

² If this Court’s reading of Plaintiff’s allegations are incorrect, and its assumption regarding the formation date of Dolphin Direct is therefore mistaken, then Plaintiffs may seek reconsideration of this Order, based on an appropriate showing.

Finally, although it appears that Defendants originally agreed to produce the 2004 financial statement and then changed their minds upon a reassessment of relevance (*see* Dkt. 29, at 3), Plaintiffs make no argument that Defendants have waived their relevance objection (*see generally id.*).

For the foregoing reasons, Plaintiff's renewed motion to compel production of the 2004 financial statement of Dolphin Offshore (Dkt. 27) is denied.

Dated: New York, New York
April 6, 2018

SO ORDERED



DEBRA FREEMAN
United States Magistrate Judge

Copies to:

All counsel (via ECF)